



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Lease-Purchase of High-Speed Turf Mower for the Parks Department (\$68,211.49)

**MEETING DATE:** November 16, 1994

**PREPARED BY:** Parks and Recreation Director

**RECOMMENDED ACTION:** That the City Council adopt the attached resolution authorizing the purchase of one Toro 580-D high-speed turf mower from the low bidder, West Star Distributing of Rancho Cordova, through a 3-year municipal lease-purchase agreement with Farmers and Merchants Bank of Lodi, at a total cost of \$68,211.49.

**BACKGROUND INFORMATION:** On September 7, 1994, the City Council approved specifications and authorized advertisement for bids for this equipment. Bid forms were sent to nine Toro dealers. Two responded, and bids were opened on September 28, 1994.

West Star Distributing, Rancho Cordova	\$63,241.71
California Turf, Brea, CA	\$64,213.61

The 1994/95 Parks Department budget includes \$15,000 for down-payment on this equipment. Of that amount, \$14,991.71 will be used for down-payment. The balance of the \$63,241.71 purchase price, \$48,250.00, will be financed. On October 25, 1994, proposals were received and opened for the financing portion of this purchase. A summary of the proposals for interest rate and payment schedules is attached as Exhibit 1.

The low interest rate was submitted by Farmers and Merchants Bank of Lodi, 5.75% per year, with six semi-annual payments totaling \$53,219.78. With \$14,991.71 down-payment and \$53,219.78 in deferred payments, the total cost of this purchase will be \$68,211.49.

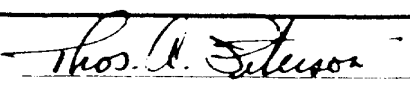
**FUNDING:**

1994/95 Budget	10 0-752.03	\$14,991.71
1995/96 Budget Requirement:		\$17,739.93
1996/97 Budget Requirement:		\$17,739.93
1997/98 Budget Requirement:		\$17,739.92

  
Ronald Williamson, Parks & Recreation Director

Prepared by Joel Harris, Purchasing Officer

APPROVED

  
THOMAS A. PETERSON  
City Manager



recycled paper

**LEASE-PURCHASE FINANCING OF TORO 580-D HIGH-SPEED TURF MOWER**

**SUMMARY OF INTEREST RATE AND DEFERRED PAYMENT PROPOSALS**

**OCTOBER 25, 1994**

<b><u>FINANCING INSTITUTION</u></b>	<b><u>INT. RATE</u></b>	<b><u>TOTAL OF PAYMENTS</u></b>
Farmers & Merchants Bank, Lodi	5.75%	\$53,219.78
West Star Distributing, Rancho Cordova	6.39%	\$53,786.88
LaSalle National Bank, Denver	6.88%	\$54,222.90
Mark Pressman Associates, San Francisco	6.98%	(1)
Business Equipment Leasing, Sacramento	6.985%	\$54,316.56
Transocean Funding, Burlingame	7.91%	\$54,812.76
Bank of Lodi	No Bid	
First Public Financing, Tulsa, OK	No Bid	

Note:

(1) Total payment calculations contained irregularities

RESOLUTION NO. 94-131

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A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING THE LEASE-PURCHASE OF ONE HIGH-SPEED TURF MOWER  
FOR THE PARKS DEPARTMENT

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WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on September 28, 1994 at 11:00 a.m. for one Toro 580-D high-speed turf mower for the Parks Department, described in the specifications therefor approved by the City Council on September 7, 1994; and

WHEREAS, said bids have been compared, checked, and tabulated and a report thereof filed with the City Manager as follows:

<u>Bidder</u>	<u>Location</u>	<u>Amount</u>
West Star Distributing	Rancho Cordova	\$63,241.71
California Turf	Brea	\$64,213.61

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed proposals were received and publicly opened on October 25, 1994 for the purpose of obtaining Municipal Lease-Purchase Financing for \$48,250.00 of the purchase price of the mower; and

WHEREAS, interest rates and payment schedules thereby proposed have been compared, checked, and tabulated and a report thereof filed with the City Manager as follows:

<u>FINANCING INSTITUTION</u>	<u>INT. RATE</u>	<u>TOTAL OF PAYMENTS</u>
Farmers & Merchants Bank, Lodi	5.75%	\$53,219.78
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Transocean Funding, Burlingame	7.91%	\$54,812.76
Bank of Lodi	No Bid	
First Public Financing, Tulsa, OK	No Bid	

Note: (1) Total payment calculations contained irregularities

WHEREAS, the City Manager recommends that award of the bid for one Toro 580-D high-speed turf mower for the Parks Department be made to the low bidder, West Star Distributing of Rancho Cordova, through municipal lease-purchase financing arranged by Farmers and Merchants Bank of Lodi;

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that award of bid for one Toro 580-D high-speed turf mower for the Parks Department be and the same is hereby awarded to West Star Distributing

of Rancho Cordova, the low bidder, in the amount of \$63,241.71 through municipal lease-purchase financing arranged by Farmers and Merchants Bank of Lodi;

BE IT FURTHER RESOLVED that the governing body of the City of Lodi (Lessee) hereby represents that the reasonably anticipated amount of qualified tax-exempt obligations which have been and will be issued by the Lessee does not exceed \$10,000,000 for the calendar year within which this Municipal Lease-Purchase Agreement is to be a "qualified tax-exempt obligation" pursuant to §265 (b) (3) of the Internal Revenue Code.

Dated: November 16, 1994

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I hereby certify that Resolution No. 94-131 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 1994 by the following vote:

Ayes: Council Members - Davenport, Manr Pennino, Snider  
Sieglock (Mayor)

Noes: Council Members - None

Absent: Council Members - None

  
Jennifer M. Perrin  
City Clerk

## EQUIPMENT LEASE AGREEMENT

THIS LEASE ("lease") is dated as of the date set forth at the foot hereof and is between FARMERS & MERCHANTS BANK OF CENTRAL CALIFORNIA ("Lessor") and \_\_\_\_\_ ("Lessee").

1. LEASE. Subject to terms of the applicable commitment between Lessor and Lessee referencing this lease, Lessor will lease to Lessee and Lessee will lease from Lessor under the terms of this lease each item of machinery, equipment and other property (individually and "Item" or "Item of Equipment" and collectively the "Equipment") purchased by Lessor for lease hereunder at Lessee's request. The Equipment will be described in a schedule or schedules now or hereafter executed by Lessor and Lessee and made a part hereof (individually a "Schedule" and collectively the "Schedules").

2. TERM. The obligations of Lessee under this lease respecting an Item of Equipment, except the obligation to pay rent with respect hereto which will commence as set forth in paragraph 3 below, commence at the earliest time any purchase order, confirming purchase order or contract of any nature transfers any interest in such Item to Lessor or creates or gives rise to any obligation or liability on the part of Lessor as to such Item, notwithstanding that such Item is not then included on a Schedule. The term of this lease with respect to an Item of Equipment ends upon the date designated in the applicable Schedule with Lessee's obligations to continue, except as specified in Paragraph 13 below, until return of the Item to Lessor as provided in such paragraph.

3. RENT AND OTHER PAYMENTS. Lessee will pay Lessor rent for the Equipment in the amounts and at the times set forth in the Schedules, whether or not Lessor has rendered an invoice therefor, at the office of Lessor set forth at the foot hereof or to such other person and/or at such other place as Lessor may from time to time designate on notice to Lessee. Any and all other amounts required to be paid Lessor by Lessee hereunder are due upon Lessee's receipt of Lessor's invoice therefor and are payable as directed in the invoice. Payments under this lease may be applied to Lessee's then accrued obligations to Lessor in such order as Lessor may choose.

4. DEPOSIT. Lessee will have deposited or will deposit with Lessor any "Deposit" amount set forth in a Schedule. Lessor may, but is not obligated to, apply any Deposit amount toward the cure of a default hereunder or under any other agreement under which Lessee has obligations to Lessor, in which event Lessee will promptly restore the Deposit amount to the full amount originally deposited. Upon expiration of the lease as to all Items of Equipment covered by a Schedule, or if a default has then occurred hereunder, upon the curing thereof, Lessor will return to Lessee the remaining balance of any Deposit amount furnished by Lessee with respect to such Schedule.

5. NET LEASE: NO OFFSET: SURVIVAL. The parties agree that this lease is a "finance lease" within the meaning of Division 10 of the California Commercial Code whether or not provisions similar to such law have been adopted in a jurisdiction where an Item of Equipment is located. Accordingly, Lessee's obligations as to an item become irrevocable and independent upon Lessee's acceptance of the Item pursuant to the applicable Schedule and Lessee will not be entitled to any abatement of rent or other payments due hereunder or any reduction thereof under any circumstances or for any reason whatsoever. Lessee hereby waives any and all existing and future claims, as offsets, against any rent or other payments due hereunder and agrees to pay the rent and other amounts due hereunder as and when due regardless of any claim which may be

asserted by Lessee. Lessee by agreeing to make all payments under this lease without offset has not waived any rights Lessee may have to prosecute any claim against Lessor in an action unrelated to this lease. This lease is not terminable by Lessee for any reason and will otherwise terminate only as provided herein. The respective obligations of Lessor or Lessee will not be affected, nor will Lessor have any liability whatsoever to Lessee, by reason of any failure or delay in delivery of any or all Items of Equipment, any defect in or damage to or loss or destruction of any or all Items of Equipment from whatever cause, the prohibition of Lessee's use of the Equipment or any Item, the interference with such use by any government, person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this lease, termination or rejection of this lease by operation of law, any lack of right, power or authority of Lessor or Lessee to enter into this lease or any other cause, whether similar or dissimilar to the foregoing. Lessee's liability for Lessee's obligations under this lease will survive the expiration of earlier termination of the lease.

6. LESSOR'S DISCLAIMER OF WARRANTIES. LESSEE ACKNOWLEDGES THAT THE EQUIPMENT IS OF A SIZE, DESIGN, TYPE AND MANUFACTURE SELECTED BY LESSEE, THAT LESSOR IS NOT A MANUFACTURER THEREOF OR A DEALER THEREIN, THAT LESSEE LEASES THE EQUIPMENT AS-IS AND THAT ACCORDINGLY LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY EXPRESS AGREEMENT, REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT AND FURTHER SPECIFICALLY DISCLAIMS ANY AGREEMENT, REPRESENTATION OR WARRANTY IMPLIED BY LAW, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, WITH RESPECT THERETO, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. Lessee understands that Lessee may have rights under the contract or contracts evidencing Lessor's purchase of the Equipment and acknowledges that Lessor has advised Lessee to contact the manufacturer or other supplier of each Item for a description of those rights. Lessor does warrant, however, that Lessor has whatever quality of title to an Item of Equipment it obtains from the manufacturer or supplier thereof, subject to this lease and any liens or encumbrances created by Lessor pursuant to paragraph 22 hereof or which Lessee is obligated to discharge or satisfy. Lessee will make any claims as to the Equipment against the manufacturers or other suppliers or other appropriate third parties, and in connection therewith Lessor agrees, until expiration or earlier termination of the term of this lease with respect to an Item of Equipment and so long as no event of default has occurred and is continuing hereunder, that Lessee will have the right to obtain the benefit of and enforce in Lessee's own name and at Lessee's sole expense any manufacturer's or other third party's warranty or agreement in favor of Lessor with respect to an Item of Equipment to the extent such warranty or agreement is assignable. Lessor will execute and deliver such instruments as may be reasonably requested by Lessee to enable Lessee to obtain such benefits.

7. NO AGENCY. LESSEE ACKNOWLEDGES THAT NO AGENT OF THE MANUFACTURER OR OTHER SUPPLIER OF AN ITEM OF EQUIPMENT OR OF ANY FINANCIAL INTERMEDIARY IN CONNECTION WITH THIS LEASE IS AN AGENT OF LESSOR. LESSOR IS NOT BOUND BY A REPRESENTATION OF ANY SUCH PARTY AND, AS CONTEMPLATED IN PARAGRAPH 28 BELOW, THE ENTIRE AGREEMENT OF LESSOR AND LESSEE CONCERNING THE LEASING OF THE EQUIPMENT IS CONTAINED IN THIS LEASE AS IT MAY BE AMENDED AS PROVIDED IN THAT PARAGRAPH.

8. DELIVERY; ACCEPTANCE. Lessee will ensure that title to each Item of Equipment vests in Lessor and that Lessor is invoiced for an Item by the manufacturer or other supplier thereof promptly following delivery and installation thereof. Upon receipt from Lessor of a Schedule covering the Equipment or any Items of Equipment, Lessee will either (a) execute and deliver the Schedule or (b) give Lessor notice specifying any defect in or proper objection to the Equipment covered thereby. Lessee's execution of

a Schedule will conclusively establish as between Lessor and Lessee that the Equipment covered thereby is acceptable to, and has been accepted by, Lessee for all purposes of this lease. If Lessee has not furnished Lessor with a Schedule within fourteen (14) days after receipt of the Schedule, Lessee will, upon Lessor's request, assume all of Lessor's rights and obligations as purchaser of the Equipment covered thereby.

9. LOCATION; INSPECTION; USE. Except as otherwise consented to in writing by Lessor, Lessee will keep, or permanently garage and not remove from the United States, as appropriate, each Item of Equipment in Lessee's possession and control at the Equipment Location designated in the applicable Schedule or at such other location to which such Item of Equipment may have been moved with the prior written consent of Lessor. Whenever requested by Lessor, Lessee will advise Lessor as to the exact location of an Item of Equipment. Lessor will have the right to inspect an Item of Equipment and observe its use during normal business hours, and Lessee will ensure Lessor's ability to enter into and upon the premises where the Item may be located for such purposes. The Equipment will at all times be used solely for commercial or business purposes, exclusive of transportation for hire in the case of any Items of Equipment constituting motor vehicles, and operated in a careful and proper manner and in compliance with all applicable laws, ordinances, rules and regulations, all conditions and requirements of the policy or policies of insurance required to be carried by Lessee under the terms of this lease and all manufacturer's instructions and warranty requirements. Any modifications or additions to an Item of Equipment required by any such governmental edict or insurance policy will be promptly made by Lessee at its own expense.

10. ALTERATIONS. Without the prior written consent of Lessor, Lessee will not make any alterations, additions or improvements to an Item of Equipment which detract from its economic value or functional utility, except as may be required pursuant to paragraph 9 above. All additions and improvements of whatsoever kind or nature made to an Item of Equipment which cannot be removed without detracting from its economic value or functional utility will be deemed accessions thereto, will belong to and immediately become the property of Lessor and will be returned to Lessor with the Equipment upon the expiration or earlier termination of this lease.

11. MAINTENANCE. Lessee, at its own expense, will maintain the Equipment in good repair, condition and working order, will furnish all parts, mechanisms, devices and labor required to keep the Equipment in such condition and will pay all costs of the Equipment's operation. Lessee will cause each Item of Equipment for which a service contract is generally available to be covered by such a contract which provides coverage typical as to property of the type involved and is issued by a competent servicing entity.

12. LOSS AND DAMAGE; CASUALTY VALUE. Lessee assumes and will bear the entire risk of loss of, theft of, requisition of, damage to or destruction of the Item of Equipment from any cause whatsoever ("Casualty Occurrence"). No Casualty Occurrence to the Equipment or any Item thereof will relieve Lessee from its obligations under this lease, except as specified in the final sentence of this paragraph 12. In the event of a Casualty Occurrence Lessee will give Lessor prompt notice thereof and will thereafter place the affected Item of Equipment in good repair, condition and working order; provided, however, that if the Item is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair or is requisitioned or suffers a constructive total loss as defined in any applicable insurance policy carried by Lessee in accordance with paragraph 16 below, Lessee, at Lessor's option, will: (a) replace the Item with like equipment in good repair, condition and working order and transfer clear title to such replacement equipment to Lessor whereupon such replacement equipment will be deemed such Item for all purposes hereof or (b) pay Lessor the

"Casualty Value" of cash Item which will equal the total of (i) all amounts other than rent, if any, due from Lessee or Lessor at the time of such payment, (ii) Lessor's investment balance in the Item as described hereinbelow and (iii) any accrued but unpaid lease charges related to the Item. Upon such replacement or payment, as appropriate, this lease will terminate with, and only with, respect to the Item so replace or paid for, and Lessee will become entitled there to AS-IS, WHERE-IS without any warranty whatsoever, express or implied.

Lessor's investment balance will be calculated by allocating as of receipt rent payments made as to an Item first to lease charges at the "Lease Charge Rate" shown on the applicable Schedule on Lessor's investment balance in the Item as it is reduced from time to time and then to the reduction of the investment balance. Lease charges will be accrued on the basis of a 365 or 366 day year, as appropriate, commencing with scheduling of an Item through the date of surrender pursuant to paragraph 13 below or through the date of payment of the Item's Casualty Value or Lessor's earlier termination of the Lease.

13. SURRENDER. Upon the expiration or earlier termination of this lease with respect to an Item of Equipment, Lessee will at its expense (unless Lessee has paid the Casualty Value thereof pursuant to paragraph 12 above) promptly return the Item, property packed and crated with freight prepaid, to Lessor at such place and by such reasonable means as may be designated by Lessor in the same repair, condition and working order as at the commencement of Lessee's obligations hereunder with respect thereto, reasonable wear and tear resulting from the proper use thereof alone excepted, and with (a) all engineering and safety changes prescribed by the manufacturer or servicing organization incorporated therein and (b) all repairs and changes as are necessary for the manufacturer or servicing organization to accept the Item under maintenance contract at its then standard rates having been made. If requested by Lessor, Lessee will, prior to returning any Item of Equipment to Lessor, provide suitable and adequate storage space at the Equipment Location shown in the applicable Schedule or such location to which the Item may have been moved with the written consent of Lessor for a period not to exceed ninety (90) days during which time Lessee will remain liable for all its obligations hereunder with respect thereto, except the obligation to pay rent on account thereof, and will ensure that Lessor will be allowed reasonable access thereto. If Lessee fails to return an Item of Equipment as required in this paragraph 13 upon the later of lease expiration or the expiration of the applicable storage period, Lessee will pay Lessor rent for such Item at the rate applicable to the Item immediately prior to lease expiration for each rental period or portion thereof until the Item is returned to Lessor in accordance herewith. Lessee acknowledges that Lessee has no right to retain an Item of Equipment following lease expiration or the expiration of the applicable storage period, as appropriate, and that any such retention is a default under this lease.

14. TITLING; REGISTRATION. Each Item of Equipment subject to title registration laws will at all times be titled and/or registered by Lessee, at its own expense and as Lessor's agent and attorney-in-fact with full power and authority to register (but without power to affect title to) the Item, in such manner and in such jurisdiction or jurisdictions as Lessor directs. Lessee will promptly notify Lessor of any necessary or advisable retitling and/or reregistration of an Item of Equipment in a jurisdiction other than one in which such Item is then titled and/or registered. Any and all documents of title will be furnished or caused to be furnished Lessor by Lessee within sixty (60) days of the date any titling or registering or retitling or reregistering, as appropriate, is directed by Lessor.

15. TAXES. Lessee will pay as directed by Lessor or reimburse Lessor for all taxes, including, but not limited to, sales and use



taxes (exclusive of federal and state taxes based on Lessor's net income, unless such net income taxes are in substitution for or relieve Lessee from any taxes which Lessee would otherwise be obligated to pay under the terms of this paragraph 15), fees, charges and assessments whatsoever, however designated, whether based on the rent or levied, assessed or imposed upon the Equipment or upon or in respect of the manufacture, purchase, delivery, ownership, leasing, use, return or other disposition of the Equipment, now or hereafter levied, assessed or imposed under the authority of a federal, state or local taxing jurisdiction, regardless of when and by whom payable. Returns required in connection with the obligations which Lessee has assumed under this paragraph 15 will, at Lessor's option, be prepared and filed by Lessor or by Lessee in such manner as Lessor may direct. Each party will upon request furnish the other a copy of any such filing made or any governmental invoice received by such party covering such obligations. If Lessee holds an exemption which would exempt Lessor and Lessee from any assessment contemplated hereby, Lessee is responsible for providing Lessor evidence of such exemption satisfactory to Lessor. Until such evidence is provided, Lessor will proceed on the assumption that the applicable assessment is due. Upon presentation of evidence of the exemption satisfactory to Lessor, Lessor will adjust its procedures prospectively. No retroactive adjustment will be made, but Lessor will assign to Lessee, to the extent assignable, any claim for refund Lessor has with respect to prior payment of the subject assessment.

16. INSURANCE/INDEMNIFICATION. Lessee hereby agrees to indemnify and hold harmless the Lessor (including its agents, employees, affiliates and subsidiaries) from any liability, loss expense (including the actual attorney, consultant and expert fees incurred in good faith) of any kind whatsoever arising from but not limited to personal injury, injury to property of anyone (including loss of use thereof), injury from breach of contract or any other economic harm whatsoever caused by acts arising of or in anyway connected with or related to performance or non-performance of this agreement. This indemnity applies regardless of any active and/or passive negligent act or omission of the Lessor or its agents or employees. In keeping with the above, the Lessee agrees to add the Lessor as an additional insured under their self-insurance plan, as well as any and all layers of excess liability insurance which they purchase above their primary self-insured layer. Certification of all such coverages as well as the additional insured inclusion shall be made as soon as practical by the Lessee. Additionally, the Lessee will insure and/or be responsible for all physical damage to the subject property and if insurance coverage is purchased on the property, it will be in a form in companies acceptable to the Lessor and it will be insured for the full replacement value thereof and the Lessor will be named as a loss payable. It shall be understood that all insurance coverages purchased by the Lessee mentioned above shall be considered primary and it will not require contribution from the Lessor. In the event of an assignment of this lease by Lessor of which Lessee has notice, Lessee will cause such insurance to provide the same protection to the assignee as its interests may appear. Lessee will promptly notify any appropriate insurer, such assignee and Lessor of each and every occurrence which may become the basis of a claim or cause of action against the insured and provide Lessor and such assignee with all data pertinent to such occurrence. The proceeds of such insurance, at the option of Lessor or such assignee, as appropriate, will be applied toward (a) the repair or replacement of the appropriate Item or Items of Equipment, (b) payment of the Casualty Value thereof or (c) payment of, or as provision for, satisfaction of any other accrued obligations of Lessee hereunder. Any excess of such proceeds remaining will belong to Lessee.

17. LESSOR'S PAYMENT. In the event Lessee fails to pay any amounts due hereunder or to perform any of its other obligations under this lease, Lessor may, at its option, but without any

obligation to do so, pay such amounts or perform such obligations, and Lessee will (a) reimburse Lessor the amount of such payment or cost of such performance and (b) pay Lessor a service charge calculated as provided in paragraph 24 below.

18. INDEMNITY. Lessee does hereby assume liability for and will indemnify, defend, protect, save and keep harmless Lessor from and against any and all liabilities, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including court costs and legal expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor (whether or not also indemnified against by any other person) in any way relating to or arising out of this lease or the design, manufacture, purchase, ownership, delivery, lease, possession, use, operation, condition, repair, return or other disposition of the Equipment by Lessor or Lessee, including, without limitation, any claim alleging latent and other defects, whether or not discoverable by Lessor or Lessee, any other claim arising out of strict liability in tort, whether or not in either instance relating to an event occurring during the term of this lease, and any claim for patent, trademark or copyright infringement. Lessee agrees to give Lessor and Lessor agrees to give Lessee notice of any claim or liability hereby indemnified against promptly following learning thereof.

19. DEFAULT. Any of the following will constitute an event of default hereunder: (a) Lessee's failure to pay when due any rent or other amount due hereunder, which failure continues for ten (10) days after the due date thereof; (b) Lessee's default in performing any other obligation, term or condition of this lease or any other agreement between Lessor and Lessee or default under any agreement providing security for the performance by Lessee of its obligations hereunder, provided such default continues for more than twenty (20) days, except as provided in (c) and (d) below, or default under any lease or any mortgage or other instrument contemplating the provision of financial accommodation applicable to the real estate where an Item of Equipment is located; (c) any writ or order of attachment or execution or other legal process being levied on or charged against any Item of Equipment and not being released or satisfied within ten (10) days; (d) Lessee's failure to comply with its obligations under paragraph 16 above or any attempted assignment of Lessee's interest in this lease or to an Item of Equipment in violation of paragraph 22 below; (e) a final judgment for the payment of money in excess of \$100,000 being rendered by a court of record against lessee which Lessee does not discharge or make provision for discharge in accordance with the terms thereof within ninety (90) days from the date of entry thereof; (f) death or judicial declaration of incompetency of Lessee, if an individual; (g) the filing by Lessee of a petition under the Bankruptcy Act or any amendment thereto or under any other insolvency law or law providing for the relief of debtors, including, without limitation, a petition for reorganization, arrangement or extension, or the commission by Lessee of an act of bankruptcy; (h) the filing against Lessee of any such petition not dismissed or permanently stayed within thirty (30) days of the filing thereof; (i) the voluntary or involuntary making of an assignment of a substantial portion of its assets by Lessee for the benefit of creditors, appointment of a receiver or trustee for Lessee or for any of Lessee's assets, institution by or against lessee or any other type of insolvency proceeding (under the Bankruptcy Act or otherwise) or of any formal or informal proceeding for dissolution, liquidation, settlement of claims against or winding up of the affairs of Lessee, Lessee's cessation of business activities or the making by Lessee of a transfer of all or a material portion of Lessee's assets or inventory not in the ordinary course of business; (j) the occurrence of any event described in parts (e), (f), (g), (h) or (i) hereinabove with respect to any guarantor or other party liable for payment or performance of this lease; (k) any certificate, statement, representation, warranty or audit heretofore or hereafter furnished

with respect hereto by or on behalf of Lessee or any guarantor or another party liable for payment or performance of this lease proving to have been false in any material respect at the time as of which the facts therein set forth were stated or certified or having omitted any substantial contingent or unliquidated liability or claim against Lessee or any such guarantor or other party; (l) breach by Lessee of any other lease or any agreement providing financial accommodation under which Lessee or its property is bound or (m) a transfer of effective control of Lessee, if an organization.

20. REMEDIES. Upon the occurrence of an event of default, Lessor, at its option, may exercise any one or more of the following remedies; (a) declare the then Casualty Value immediately due and payable with respect to any or all Items of Equipment without notice or demand to Lessee; (b) sue for and recover all rent and other payments, then accrued or as thereafter accruing, with respect to any or all Items of Equipment; (c) take possession of and render unusable any or all Items of Equipment, without demand or notice, wherever same may be located, without any court order or other process of law and without liability for any damages occasioned by such taking of possession (any such taking of possession will not constitute a termination of this lease as to any or all Items of Equipment unless Lessor expressly so notifies lessee in writing); (d) require Lessee to assemble any or all Items of Equipment at the Equipment Location therefor, such location to which such Equipment may have been moved with the prior written consent of Lessor or such other location in reasonable proximity to either of the foregoing as Lessor designates; (e) sell or otherwise dispose of any or all Items of Equipment, whether or not in Lessor's possession, in a commercially reasonable manner at public or private sale and with or without notice to Lessee and apply the net proceeds of such sale, after deducting all costs of such sale, including, but not limited to, costs of transportation, repossession, storage, refurbishing, advertising and brokers fees, to the obligations of Lessee hereunder with Lessee remaining liable for any deficiency and with any excess being retained by Lessor; (f) retain any repossessed Items of Equipment and credit the reasonable value thereof, after deducting all such sales related costs incurred to the date of crediting, to the obligations of Lessee hereunder with Lessee remaining liable for any deficiency and with Lessor having no obligation to reimburse Lessee on account of any excess of such reasonable value over such obligations; (g) terminate this lease as to any or all Items of Equipment or (h) utilize any other remedy available to Lessor at law or in equity.

A termination hereunder will occur only upon written notice by Lessor to Lessee and only with respect to such Items of Equipment as to which Lessor specifically elects to terminate in such notice. Except as to such Items with respect to which there is a termination, this lease will remain in full force and effect and Lessee will be and remain liable for the full performance of all its obligations hereunder.

No right or remedy conferred herein is exclusive of any other right or remedy conferred herein or by law, but all such rights and remedies are cumulative of every other right or remedy conferred hereunder or at law or in equity, by statute or otherwise, and may be exercised concurrently or separately from time to time.

21. LESSOR'S EXPENSES. Lessee will pay or reimburse Lessor for all costs and expenses, including repossession and court costs, attorney's fees and Equipment disposition costs not offset against amounts recovered or credited as contemplated in paragraph 20, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions hereof. This obligation includes the payment or reimbursement of all such amounts whether an action is ultimately filed and whether an action filed is ultimately dismissed.

22. ASSIGNMENT. WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR, LESSEE WILL NOT SUBLET ANY ITEM OF EQUIPMENT OR OTHERWISE ASSIGN, TRANSFER, PLEDGE OR HYPOTHECATE THIS LEASE, ANY ITEM OF EQUIPMENT OR ANY INTEREST IN THIS LEASE OR IN AND TO THE EQUIPMENT OR PERMIT ITS RIGHTS UNDER THIS LEASE TO BE SUBJECT TO ANY LIEN, CHARGE OR ENCUMBRANCE OF ANY NATURE, LESSEE'S INTEREST HEREIN IS NOT ASSIGNABLE AND WILL NOT BE ASSIGNED OR TRANSFERRED BY OPERATION OF LAW. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by Lessee or any other person. Lessee further acknowledges that Lessor's consent to any sublease will be on the basis, among other considerations, that the sublessee's rights are subordinate to the rights of Lessor under this lease and further that Lessee will not be released from any of Lessee's obligations hereunder.

All rights of Lessor hereunder and in the Equipment may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, without notice to Lessee but always, however, subject to the rights of Lessee under this lease. If Lessee is given notice of any such assignment, Lessee will acknowledge receipt thereof in writing and will thereafter pay any amounts due hereunder specified in said notice as directed therein. In the event Lessor assigns this lease or the rent due or to become due hereunder or any other interest herein, whether as security for any of its indebtedness or otherwise, no breach or default by Lessor hereunder or pursuant to any other agreement between Lessor and Lessee will excuse performance by Lessee of any provision hereof, it being understood that in the event of such default or breach by Lessor that Lessee will pursue any rights on account thereof solely against Lessor. No such assignee will be obligated to perform any duty, covenant or condition required to be performed by Lessor under the terms of this lease.

Subject always to the foregoing, this lease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

23. OWNERSHIP; PERSONAL PROPERTY. The Equipment is, and at all times will remain, the sole and exclusive property of Lessor. Lessee, notwithstanding any trade-in or down payment made by Lessee or on its behalf with respect to the Equipment, will have no right, title or interest therein or thereto except as to the use thereof subject to the terms and conditions of this lease. Lessee will keep the Equipment free and clear of all liens, encumbrances and charges of any nature except liens, encumbrances and charges created by Lessor pursuant to paragraph 22 hereof. If at any time during the term hereof Lessor supplies Lessee with labels, plates, decals or other markings stating that the Equipment is owned by Lessor, Lessee will affix and keep the same prominently displayed on the Equipment or will otherwise mark the Equipment. Any Equipment Location or any other location where an Item of Equipment may be located with the prior written consent of Lessor, at Lessor's request, to indicate Lessor's ownership of the applicable Equipment. The Equipment is, and at all times will remain, personal property notwithstanding that the Equipment or any Item may now be, or hereafter become, in any manner affixed or attached to or embedded in or permanently resting upon real property or any improvement thereon or attached in any manner to what is permanent as by means of cement, plaster, nails, bolts, screws or otherwise. If requested by Lessor prior to or at any time during the term hereof with respect to any Item of Equipment, Lessee will obtain and deliver to Lessor waivers of interest or liens in recordable form satisfactory to Lessor from all persons claiming any interest in the real property on which such Item is or is to be installed or located.

24. LATE CHARGE. If Lessee fails to pay any rent or any other sum to be paid by Lessee to Lessor on or before the due date thereof, Lessee will pay Lessor (a) Lessor's internal collection costs paid third parties relevant to the collection thereof and (b) interest

on such unpaid installment or other amount at the rate of eighteen percent (18%) per annum, or at such greater or lesser maximum contract rate as may be applicable to Lessor, computed from the date due to the date paid.

25. NON-WAIVER. No covenant or condition of this lease can be waived except by the written consent of Lessor. Forebearance or indulgence by Lessor in regard to any breach hereunder will not constitute a waiver of the related covenant or condition to be performed by Lessee.

26. ADDITIONAL DOCUMENTS. If requested by Lessor, Lessee will procure and/or execute, have executed, acknowledge, have acknowledged, deliver to Lessor, record and file such documents and showings as Lessor may deem necessary or desirable to protect its interest in this lease and the Equipment. Lessee will pay as directed by Lessor or reimburse Lessor for all search, filing, attorney's services and other charges incurred by Lessor in connection with such documents and showings, any similar documents and showings Lessor may procure and any real property waivers provided under paragraph 23 above. Lessee, without limiting the generality of the first sentence of this paragraph, acknowledges that Lessor will file precautionary financing statements with respect to the Equipment under the Uniform Commercial Code, as amended, or other similar provisions of law, and authorizes Lessor where permitted by law to make such filings without Lessee's signature. Lessee further will furnish Lessor (a) a fiscal year end financial statement including balance sheet and profit and loss statement within one hundred twenty (120) days of the close of each fiscal year, (b) any other information normally provided by Lessee to the public and (c) such other financial data or information relative to this lease and the Equipment as Lessor may from time to time reasonably request.

27. LESSEE'S WARRANTIES. Lessee certifies and warrants that the financial data and other information which Lessee has submitted, or will submit, to Lessor in connection with this lease is, or will be, as appropriate, a true and complete statement of the matters therein contained. Lessee further certifies and warrants that (a) this lease has been duly authorized, executed and delivered by Lessee and constitutes the legal, valid and binding obligations, contract and agreement of Lessee enforceable against Lessee in accordance with its respective terms except as enforcement may be affected by bankruptcy and similar laws affecting creditors' rights generally and (b) this lease and each and every showing provided by or on behalf of Lessee in connection herewith may be relied upon by Lessor in accordance with the terms thereof notwithstanding the failure of Lessee or other applicable party to ensure proper attestation thereto, whether by absence of a seal or acknowledgment or otherwise. The person executing this lease on behalf of Lessee warrants that he or she has been fully authorized to do so.

28. ENTIRE AGREEMENT. This lease constitutes the entire agreement between Lessor and Lessee relative to the leasing by Lessor to Lessee of the Equipment and may be amended, altered or changed only by a writing signed by the party to be charged.

29. NOTICES. Notices under this lease must be in writing and must be mailed by United States mail, certified mail with return receipt requested, duly addressed, with postage prepaid, to the party involved at its respective address set forth at the foot hereof or at such other address as such party may provide on notice to the other from time to time. Notices will be effective when deposited. Each party will promptly notify the other of any change in the first party's address.

30. GENDER; NUMBER; JOINT AND SEVERAL LIABILITY. Whenever the context of this lease requires, the neuter gender includes the masculine or feminine and the singular number includes the plural;

and whenever the word "Lessor" is used herein, it will include all assignees of Lessor, it being understood that specific reference to "assignee" in paragraph 16 above is for further emphasis. If there is more than one Lessee named in this lease, the liability of each will be joint and several.

31. TITLES. The titles to the paragraphs of this lease are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

32. INVALIDITY. If any term or provision of this lease or the application thereof to any person is, to any extent, invalid or unenforceable, the remainder of this lease, or the application of such provision to a person other than those to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this lease shall be valid and be enforced to the fullest extent permitted by law.

33. SURVIVAL. The obligations which Lessee is required to perform during the term of this lease shall survive the expiration or other termination of this lease.

34. GOVERNING LAW; VENUE. This lease will be governed and construed in accordance with the law of the State of California. Venue for any action related to this lease will be in an appropriate court in San Joaquin County, California, to which Lessee consents, or in another court selected by Lessor which has jurisdiction over the parties.

35. TIME. Time is of the essence of this lease and each and all of its provisions.

IN WITNESS WHEREOF, the undersigned have executed these presents as of \_\_\_\_\_

FARMERS & MERCHANTS BANK  
OF CENTRAL CALIFORNIA

By:

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

P.O.Box 3000  
Lodi, CA 95241-1902

Address:

(Corporate Seal; Individual or  
Partnership Notarial  
Acknowledgment)

\*Failure to affix not to affect  
validity or reliance.

SCHEDULE NO. 1  
TO EQUIPMENT LEASE AGREEMENT BETWEEN  
FARMERS & MERCHANTS BANK OF CENTRAL CALIFORNIA  
AS LESSOR, AND

AS LESSEE, DATED AS OF  
\_\_\_\_\_, 19\_\_ (the "Lease").

Lessor and Lessee acknowledge that the Items of Equipment described in this Schedule are subject to the terms and conditions of the Lease and that following such description are the cost of said Items, the expiration date of the Lease with respect thereto, the rent therefor, any deposit provided or to be provided in connection therewith, the Equipment Location thereof, the Lease Charge Rate applicable thereto and, if stated, certain other provisions applicable thereto. Lessee represents to Lessor that this Equipment has been delivered to, is now in the possession of and has been accepted by Lessee for all purposes of the Lease and is correctly described herein. LESSEE UNDERSTANDS THAT UPON LESSOR'S ACCEPTANCE OF THIS SCHEDULE LESSOR WILL FUND THE COST OF THIS EQUIPMENT AND FURTHER THAT SUCH ACCEPTANCE WILL COMMENCE LESSEE'S IRREVOCABLE RENTAL OBLIGATION UNDER THE LEASE AS TO THIS EQUIPMENT. LESSEE REAFFIRMS THAT LESSOR HAS MADE NO EXPRESS WARRANTIES AND HAS DISCLAIMED ANY IMPLIED WARRANTIES AS TO THIS EQUIPMENT AND THAT LESSEE'S OBLIGATION TO PAY THE RENT AND OTHER AMOUNTS DUE UNDER THE LEASE WILL NOT BE AFFECTED BY ANY PROBLEMS ASSOCIATED WITH THE EQUIPMENT OR ANY SIMILAR OR DISSIMILAR OCCURRENCE AS MORE FULLY SET FORTH IN THE LEASE.

1. Equipment Description:
2. Equipment Cost: \$
3. Lessee's Deposit: \$
4. Lessor's Investment: \$
5. Term: Unless sooner terminated as set forth in this Schedule or in the Lease respecting each Item of Equipment listed hereon expires on the due date of the final rent payment.
6. Rent: Except as otherwise provided in the Lease or in this Schedule, rent shall be due and payable in arrears in \_\_\_\_\_ installments commencing \_\_\_\_\_, 19\_\_ (the "Rent Commencement Date") as follows: \$ \_\_\_\_\_ per month.

At the time of payment of the final rent, Lessee will also pay Lessor any of Lessor's "investment balance" remaining as to the Equipment covered hereby, and Lessor without further action will be deemed to have released its interest in such Equipment.

7. Equipment Location: \_\_\_\_\_  
\_\_\_\_\_  
(City) (County) (State) (Zip)

Legal Description:

\_\_\_\_\_

\_\_\_\_\_

8. Lease Charge Rate: \_\_\_\_\_ %

9. Other Provisions: Lessee to pay Lessor a Document Transaction Fee of \$ \_\_\_\_\_ to cover Legalities, Recording Fees and UCC Code Filing Fees.

ACCEPTED AND APPROVED AS OF \_\_\_\_\_, 19\_\_\_\_, as a Schedule to be made a part of the Lease.

FARMERS & MERCHANTS BANK  
OF CENTRAL CALIFORNIA

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

NOTICE TO THE LESSEE: DO NOT SIGN UNLESS ALL ITEMS OF EQUIPMENT ARE ACCEPTABLE FOR ALL PURPOSES OF THE LEASE. IF ANY ITEMS ARE UNACCEPTABLE, NOTIFY LESSOR PROMPTLY.

NOTICE: NOT TO BE USED FOR RESIDUAL VALUE LEASES.